S
342.05
A13m
Vol.2
No.4
May
1978

SHELVED WITH
PERIODICALS

Montana State Library
3 0864 1004 9124 3

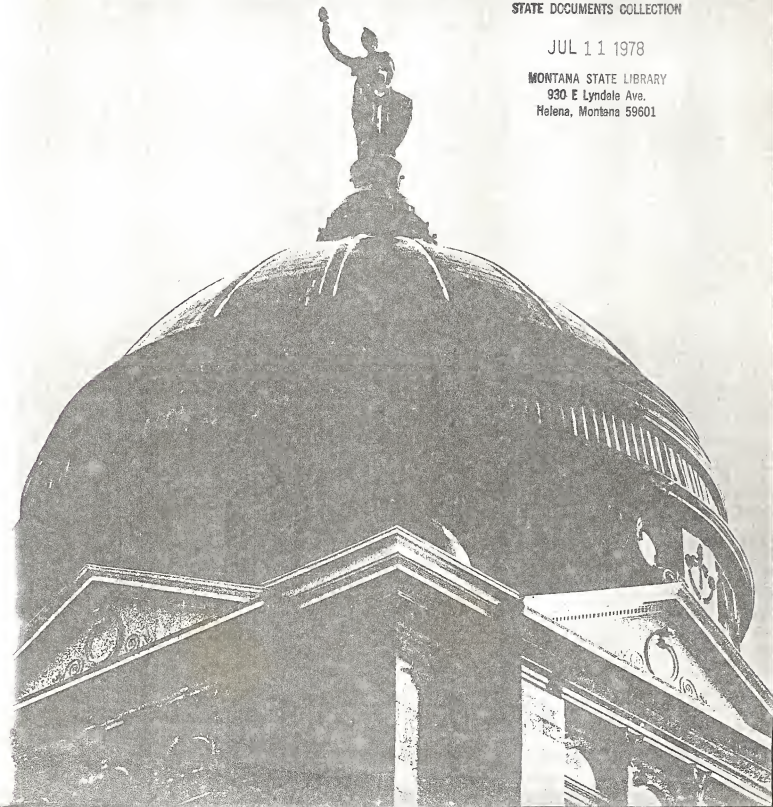
# MONTANA PROSECUTOR

May, 1978 Volume 2, No. 4

STATE DOCUMENTS COLLECTION

JUL 11 1978

MONTANA STATE LIBRARY
930 E Lyndale Ave.
Helena, Montana 59601



## INTRODUCTORY NOTES

Funds are still available for out-of-state prosecutor training. An updated schedule of events is enclosed. Requests for training should be submitted to the Office of County Prosecutor Services. The requesting party will be obliged to cover ten percent of the cost, with the remaining ninety percent to be covered by the funds made available for this training.

Contained in this issue is a citation to the case of Puller v. Municipality of Anchorage, infra, page 5, which deals with using a DWI suspects' refusal to take a test against him or her at trial. Absent a specific warning that the refusal can be so used, Alaska prohibits using the refusal at trial. To avoid similar problems, Montana prosecutors may wish to encourage local law enforcement to use a specific warning concerning refusal.

In Karen Harris v. Auchard Creek School District, the Human Rights Commission, in a three-two decision held that a school district cannot base its decision not to hire on the fact that a teacher is single and living with a man. The Commission held such to be employment discrimination as prohibited by section 64-306(1)(a), R.C.M. 1947. David E. Fuller, Delores Storm and Lee Topash formed the majority, while Karen Townsend (a Missoula Deputy County Attorney) and Peg Krivec dissented. A copy of the opinion may be obtained from CPS upon request.

The Sixth Annual National Welfare Fraud Association Region X Training Conference will convene at the Ridpath Hotel in Spokane, Washington June 13-16, 1978. Registration forms can be obtained from NDAA, 211 East Chicago Avenue, Suite 1515, Chicago, Illinois 60611, (312) 944-2577. Funds are available through CPS.

Also contained within this issue is an article on "The Impact of Crime on Business Everyone Pays" by Dr. William F. Ballhaus, and an article on child abuse by Ed Meese, courtesy of the California District Attorney's Office.

# RECENT CASES AND NOTES

## COUNSEL

Denial of counsel at the preliminary hearing where defendant's counsel failed to show up was not grounds for reversal, since the guilty verdict mooted any argument that there was no probable cause, the argument that counsel could have fashioned impeachment evidence by cross-examination was speculative, defendant lost no discovery rights, did not raise the insanity defense, and his indigency made bail a moot question. State v. Canaday, 574 P.2d 60, (Ariz.).

## EXHIBITING WEAPON

Whether the witness was actually afraid when the defendant pointed a gun at him, because he knew the defendant would not shoot, is irrelevant in a prosecution for exhibiting a deadly weapon in a threatening manner. The harm to be punished is endangering others without the specific intent to do so. State v. Montijo, 574 P.2d 466.

## OPEN END OFFENSE

An open end offense is presumed a felony unless and until the sentencing court designates it as a misdemeanor, and since probation is not a sentence, a "felony" length probation may be imposed, at the end of which the offense may be designated a misdemeanor. State v. Risher (Ariz.) 574 P.2d 453.

## COMMENT ON SILENCE

Where the defendant claimed that he was the victim of an armed robber instead of the perpetrator, cross-examination about his failure to do anything a normal victim would do, such as warning others a robbery was in progress, and the prosecutor bringing out that the first time he claimed to be a victim was when he took the stand and testified was not a comment on defendant's exercise of silence after Miranda. State v. Taylor (Kan.) 574 P.2d 210.

## CONFRONTATION

It was not an abuse of discretion to deny defendant's motion to sever from codefendant the day of trial so that the codefendant could exculpate him, inter alia the great mass of cases refuse to grant such continuances. Defendant has no absolute right to elicit testimony from any witness whom he

CONFRONTATION (cont.)

may desire, the Sixth Amendment notwithstanding, as a witness may be unavailable to him for reasons such as death, incapacity, presence outside range of legal process, or refusal of witness to testify by reason of his assertion of Fifth Amendment rights. United States v. Gay (9th Cir.) 567 F.2d 916.

DRUGS & NARCOTICS

Defendant's contention that when the legislature banned possession of Cannabis, Sativa L. it did not ban other species of marijuana goes down to defeat despite old law school arguments of expressio unius est exclusio alterius, and the court notes 9 out of 10 federal circuit courts disagree with defendant in State v. Luginbill (Kan.) 574 P.2d 140.

HEARSAY

Witness's testimony as to statements made by defendants in robbery prosecution in each other's presence was not inadmissible on ground it was hearsay because a witness may testify as to what he saw and heard in the defendant's presence. Moore v. State (Ga.) 240 S.E.2d 68.

IMMUNITY

The defendant telling the state what he knew did not require that he be granted immunity under an agreement that if the state wanted to use the information the state would grant him immunity, and if it did not, the information would not be used against him. United States v. Rothman (7th Cir.) 567 F.2d 744.

INTIMATE PARTS

Court upholds defendant's conviction for touching intimate parts through clothing, holding that whether buttocks are intimate parts is a jury question. State v. Buller (Ore.App.) 571 P.2d 1263.

MURDER

The jury was free to disregard the initial emergency room diagnosis of one broken rib and credit the autopsy report of four broken ribs rupturing the spleen, particularly where the patient died shortly after the initial exam while waiting for further x-rays. Grondin v. State (Nev.) 573 P.2d 205.

PRELIMINARY HEARING

A magistrate's refusal to allow the prosecution to reopen its case because the prosecutor had presented evidence and the matter had been argued, was an abuse of discretion, particularly since the prosecutor had other witnesses present who could testify about the element of the crime the judge had doubts about. Stockwell v. State (Idaho) 573 P.2d 116.

PRINCIPAL

Where an innocent party commits a crime at the urging of another, and the other is the only one who has the requisite criminal intent, that second party is a principal, and the acquittal of the innocent party does not require an acquittal for the second party. Here the defendant drew a gun on the victim, they struggled, the defendant's sister arrived and saw the struggle, the defendant yelled for her to shoot the victim and the sister did with another gun. The defendant's second degree murder for using a gun, was affirmed even though the sister who pulled the trigger was found not guilty. People v. Williams (App.) 142 Cal. Rptr. 704.

PROBATION CONDITIONS

Where defendant signed order acknowledging that he received copy of probation order and that he understood that violation of any probation conditions could result in revocation of probation and sentence, defendant could not successfully contend that he did not understand the probation conditions, including violated requirement that he file monthly reports. State v. Stroud (Neb.) 261 N.W.2d 777.

ROBBERY - WEAPONS

Even though defendant did not mention, draw or use his weapon until after he had fled the scene of the robbery, defendant's conviction of robbery while armed with a deadly weapon was affirmed where the clerk was aware of and frightened by the gun before the defendant reached into the cash register. Dalie v. State (Nev.) 574 P.2d 271.

SEARCH WARRANT

Innocent material misstatements, if made in good faith and neither intentionally nor recklessly, will not vitiate otherwise sufficient affidavit submitted by government agent in support of request for search warrant. United States v. Hole (9th Cir.) 564 F.2d 298.

RAPE

"What we think is the sounder view recognizes that the bruising and terrorizing of the senses and sensibilities can be just as wrong as the beating and bruising of the flesh. . . Accordingly in determining whether the victim's will and resistance were overcome, it is appropriate to consider that this may be accomplished by either physical force and violence, or by psychological or emotional stress imposed upon her, or by a combination of them." State v. Studham (Utah) 572 P.2d 700.

An apparent unarmed defendant slapping the victim and threatening to knock her head off if she did not take her clothes off prevented the victim from resisting rape by threats of great physical harm accompanied by apparent power of execution. Barrett v. State (Okla.Cr.) 573 P.2d 1221.

THEFT - PROPERTY

Where six weapons belonging to six separate owners were seized from defendant pursuant to a search warrant, six convictions for theft by controlling property were affirmed. Where one defendant possesses the property of several owners in one place at one time, there can be as many convictions as there are property owners. State v. Gilbert (Ore.) 574 P.2d 313.

WITNESSES - CONFRONTATION

Defendant's claim that his right of confrontation was violated by the state's failure to call non-law enforcement victims injured by him during a high-speed chase was invalid, particularly so since he made no effort to get a continuance or secure the witnesses' attendance. Citing an Arizona Supreme Court decision, the court holds that the right of confrontation extends only to witnesses called at trial and does not require either the victim or the accuser be called as a witness. State v. Bailey (Kan.) 573 P.2d 590.

PROBABLE CAUSE - ODOR OF MARIJUANA

Blanford was stopped at a permanent border check-point. While questioning Blandford, the agent detected a strong odor or marijuana. Approximately 25 lbs. of marijuana was found in a suitcase of Blanford's vehicle. Detecting the odor of marijuana during the citizenship inquiry provided the Border Patrol agent with probable cause to justify the search of the vehicle for contraband. Blanford v. United States, 566 Federal 2d 470.

INDIGENT DEFENDANT - INVESTIGATIVE ASSISTANCE

Oklahoma has once again refused to find that an indigent is constitutionally entitled to the provision by the state of investigative funds for the preparation of his defense. Dennis v. State, 561 P.2d 88 (1977). See also Trowbridge V. State, 502 P.2d 495.

MIRANDA

An Illinois theft defendant who confessed to a polygraph examiner when informed he had "flunked" the test had his conviction affirmed in spite of his claim that the examiner had not given him his Miranda warnings. The court held that such warnings were not necessary since the polygraph examination did not constitute "custodial interrogation." People v. McCue, 362 N.E.2d 760 (1977).

POLYGRAPH - ADMISSIBILITY - WITNESSES

A New Jersey appellate court has reaffirmed the inadmissibility of polygraph test results, even of witnesses, without an express stipulation to that effect. State v. Christopher, 373 A.2d 605 (1977). Also see People v. Saffold, 365 N.E. 524 (Ill. 1977)

DRUGS - MANUFACTURING

Under the Illinois statutes, graduated penalties are provided for the possession and manufacture of cannibis, based on the quantity of the substance recovered. The Court in this case held that bits of paper and soil may be weighed in determining the total weight and that all the cannibis found on the premises at the time of arrest may be aggregated in proving the requisite statutory quantity. People v. Calhoun, 365 N.E.2d 55 (1977).

DWI - REFUSAL

Puller v. Municipality of Anchorage, Alaska Sup.Ct. 2/24/78, 22 CrL 2501. Refusal to take breath test can't be used agianst DWI defendant's. By statute, refusal to take the test can result in the suspension, revocation, or denial of a license and the suspect must be so advised. Since the required warning does not advise that a refusal will be admissible at trial, it cannot be so used.

ARGUMENT - PROSECUTION - ERROR

The prosecutor went too far in arguing that the government agents who testified had "no interest in the case other than seeing that they are upholding...the laws...and that individuals such as [the defendant] who violate these federal laws are brought to justice." This attempt to bolster the credibility of government witnesses amounted to error. United States v. Morris, CA 5, 2/24/78, 22 CrL 2505.

MIRANDA

The U.S. Court of Appeals for the Ninth Circuit decided in U.S. v. Rodriguez-Gastelum, 22 CrL 2473, 1/30/78, that Miranda must be applied with "flexibility and realism". "To bar waiver of the right to counsel after an initial demand is neither required by the Sixth Amendment nor consistent with good law enforcement."

In People v. Roger Sparks, No. 30188, March 20, 1978, the Michigan Court of Appeals held that,

> ...when a person asserts his right to counsel, the interrogation must cease until an attorney is present, or, after the lapse of a significant period of time, the person knowingly and intelligently waives his counsel right.

The court observed that the defendant has a right to speak without the aid of counsel. The critical issue is whether "the person's right to cut off questioning was scrupulously honored". The court cautioned that this does not permit resumption of interrogation "after a momentary respite" but only after passage of "a significant period of time".

MIRANDA

The Ninth Circuit rejects a per se rule precluding an interrogation after a suspect has requested a lawyer. The Court sees no error in the admission of inculpatory statements made by a defendant who had initially agreed to waive his Miranda rights and cooperate with officials but then twice asked to see an attorney friend. U.S. v. Rose, CA9, 2/28/78, 23 CrL 2030.

Suspect who waived his Miranda rights and submitted to questioning by law enforcement officials did not revoke that waiver by failing to respond to one question. As a result, there was no error in the introduction at trial of testimony about the accused's failure to respond. U.S. v. Loranzo, CA9, 2/21/78, 23 CrL 2034.

*"My client gets 100 years on each of the five charges? Will that be concurrent or consecutive, your honor?"*

AIRPLANES - VEHICLES

The search and seizure rules applicable to motor vehicles also apply to airplanes since an airplane is mobile, is subject to licensing and travel restrictions, and is less likely to be the repository of private papers, etc., because it's contents are exposed to public view. State v. White, 574 P.2d 840.

CHILDREN - WITNESSES

An eight year old child's inability to give an abstract definition of truth did not matter where the child knew the difference, passed a few practical tests, and knew if he lied he got spanked. State v. Pittman, (Ariz.) 574 P.2d 1290.

CONSENT

The owner of the house could not give valid consent for officers to search defendant's room, where the room was not used for storage and defendant exercised sole dominion and control over the room. State v. Tucker (Ariz.) 574 P.2d 1295.

EXPERT WITNESS - DRUGS

Fact that a detective qualified as an expert as to the custom and usage of heroin users had never personally seen anyone snort heroin did not mean that it was improper to let him testify that the amount of heroin indicated possession for sale. State v. Prevost, 574 P.2d 1319.

FELONY MURDER

It was unnecessary to instruct on second degree murder or voluntary manslaughter where defendant planned the robbery which led to the killing. It was felony murder or nothing. State v. Tucker (Ariz.) 574 P.2d 1295.

IMPRISONMENT

A sentence to the county jail is a sentence of imprisonment which can be made to run consecutive to other sentences of imprisonment. State v. Sanders, 574 P.2d 1316.

POLYGRAPH

Even if a non-admissible polygraph did not end when the officer turned off the machine and told defendant he was lying, it ended when the examiner left the room. Since defendant had been given his Miranda warnings, his subsequent statement to another officer was voluntary. State v. Tucker (Ariz.) 574 P.2d 1295.

PRELIMINARY HEARING - DISCOVERY

Proper to deny a continuance, requested the day of trial, to hold a preliminary hearing for discovery purposes, since the purpose of a preliminary hearing is to determine probable cause. The defendant has no right to discovery at the hearing, and discovery is incidental. State v. Prevost, 574 P.2d 1319.

PRETRIAL INCARCERATION

A defendant is not entitled to credit for presentence jail time spent as a result of federal charges, and is not entitled to credit for presentence jail time spent because he was being held without bond for violating the terms of the previous bond. State v. Prevost, 574 P.2d 1319.

PROBABLE CAUSE - REPUTATION

A suspect's reputation has probative value in determining probable cause, and cannot be excluded. State v. Donahoe, 574 P.2d 830.

SEARCH AND SEIZURE

An officer's warrantless nighttime entry of an airplane from which a brick of marijuana had been taken by a private citizen did not violate the Fourth Amendment since the officer had probable cause, the occupants of the airplane were at large, and the airplane's flat tire could have rapidly been changed. The open fields doctrine also validated the search since defendant had no reasonable objective expectation of privacy in the airplane parked on a private airstrip located in the forest. State v. White, 574 P.2d 840.

SENTENCING

A concurrent sentence for a vicious jail assault is no sentence at all, a consecutive sentence was proper even though it meant that defendant had to serve out his original sentence (evidently life) without possibility of parole before he could start serving the consecutive misdemeanor sentence of imprisonment. State v. Sanders, 574 P.2d 1316.

SUFFICIENCY OF EVIDENCE

Evidence which showed that defendant forced entry into decedent's house using a gun, and that decedent was shot three times was sufficient to establish premeditation or deliberation. State v. Pittman (Ariz.) 574 P.2d 1290.

TRANSCRIPTS

Held proper to refuse an indigent a transcript of his codefendant's trial in State v. Coe (Kan.) 574 P.2d 929.

ARGUMENT

Although an argument during the opening statement that certain defense witnesses did not ever approach the investigator (objection, mistrial) may have exceeded the boundaries of laying out what the prosecutor intended to prove, such arugument did not amount to intentional misconduct to which double jeopardy would attach. Since it was not, and the defense requested the mistrial, a retrial was proper. Thompson v. State (Md.Sp.App.) 381 A.2d 704.

FIFTH AMENDMENT

Where defendant chose not to testify at his trial, it was reversible error for the court, over defense objection, to give jury failure to testify instruction. (The United States Supreme Court recently held the opposite, proper to give instruction over objection, in Lakeside v. Oregon, 22 Cr.L. 3083) Hill v. State (Ind.) 371 N.E.2d 1303.

MIRANDA WARNINGS

Although the number of officers present may have influenced defendant, where questioning took place during day light and around defendant's home, police officers did not arrest defendant or exercise physical control over his movements and defendant willingly took officers to van on his own initiative, there was no custodial interrogation requiring defendant be advised of his Miranda rights. Failure to advise defendant did not render his statements and actions inadmissible. State v. Craney (Me.) 381 A.2d 630.

POST-CONVICTION RELIEF

"The most damning criticism of our criminal justice system today is that there is no finality. Somewhere the process of seemingly interminable review must come to a halt. In this case, we call the halt, here and now." Court goes on to eliminate a second post-conviction relief petition holding there is no constitutional right to post-conviction relief. Curtis v. State (for the last time) (Md.Sp.App.) 381 A.2d 1166.

JUDGES - SPECIAL ACTIONS

A judge named in a Special Action has the right to appear and to be represented. Further, the County Attorney may represent the judge named in the Special Action, although he is not required to do so. Fenton v. Howard (Ariz.) 565 P.2d 318.

EYEWITNESS IDENTIFICATION

It is not error to refuse to allow expert testimony on the limitations and weaknesses of eyewitness identification. State v. Valencia, 575 P.2d 335.

SEARCH & SEIZURE

Where defendant had a key to the shed and used it for storage he had standing to contest a search of the shed. His consent to search the house did not extend to the shed, the warrantless search of the shed was illegal. State v. Billups (Ariz.) 575 P.2d 323.

STOLEN PROPERTY

A defendant who schemed to cash a stolen check, including making plans about what to do if a civil or criminal lawsuit were instituted, was properly convicted of receiving stolen property even though the only thing he received was cash. To hold otherwise would defeat the purpose of the statute and ignore the fact that the check was worthless until the scheme to cash it was completed. State v. Key, 575 P.2d 826.

CONTINUANCE

Refusing a short continuance for the prosecutor to get the search warrant affidavit, which was an essential element at the suppression hearing, was an abuse of discretion when the judge raised the issue sua sponte after arguments. The defense would not have been prejudiced and the prosecutor did not intend to delay proceedings. "When the court became concerned about the probable cause issue [it should have allowed the continuance] so that it could make a fully informed decision." (emphasis in text) People v. Espinoza (Colo.) 575 P.2d 851.

COUNSEL

The fact that defendant was acting on the advice of counsel when he violated a condition of probation requiring him to make restitution was not a defense to a probation revocation. State v. Thorstad (N.D.) 261 N.W.2d 899.

DIRECTED VERDICT

A defendant, by introducing evidence after his motion for directed verdict was overruled, thereby waives any error in overruling of such motion. Jackson v. State (Ind.) 371 N.E.2d 698.

HEARSAY

The story of a victim and the fact she chose both defendants' photos from lineups shown her shortly before she died from internal bleeding, which was the result of the head wound received in the robbery, were properly admitted since the defendants had not been arrested. The statement was made when the victim had a clear memory and no motive to distort or falsify. State v. Berry (Kan.) 575 P.2d 543.

ENTRAPMENT

Entrapment is not a defense if the defendant claims that he does not remember the transaction in question. State v. Padilla (N.M.App.) 575 P.2d 960.

INDIANS

Indians lack jurisdiction to try non-Indians for crimes committed on the reservation. Oliphant v. Suquamish Indian Tribe 98 S.Ct. 1011.

INTENT

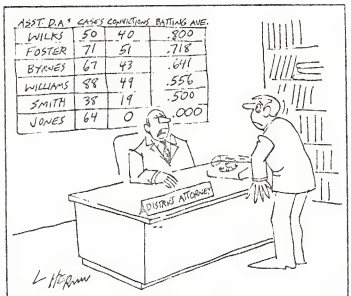
The intent to deprive the owner of 18 shirts was sufficiently shown even though the defendant never left the store. The defendant concealed 18 shirts about his person and was stopped ninety-six feet from the checkout counter and four feet from the exit. People v. Contreras (Colo.) 575 P.2d 433.

MUG SHOTS

Having the victim, who could not identify anyone at trial, identify mug shots of the defendant as the person who attempted to pass a forged prescription was proper where the defendant drastically changed his appearance prior to trial, citing an Arizona case. State v. Jacobs (N.M.App.) 575 P.2d 954.

NOTES - DISCLOSURE

Police officer's notes are not "statements" which are discoverable under the Oregon discovery law, since they are meant only to help the officer prepare his report and are not intended to communicate to other people, destroying the notes after the officer made his report was proper, where report "improved upon" the notes which had contained quotes. State v. Morrison (Or.App.) 575 P.2d 988.


ASST. D.A.'S CASES CONVICTIONS BATTING AVE.
WILKS 50 40 .800
FOSTER 71 51 .718
BYRNES 67 43 .641
WILLIAMS 88 49 .556
SMITH 38 19 .500
JONES 64 0 .000
DISTRICT ATTORNEY

*"I suppose you're wondering what I wanted to see you about this morning, Jones!"*

RACE

Kansas upholds it's previous rule that the prosecutor using his preemptory strikes to remove all members of defendant's race from the jury does not alone deprive defendant of a fair trial. State v. Sanders (Kan.) 575 P.2d 533.

SEARCH & SEIZURE

Police properly seized receipts, addressed envelopes, utility statements, copy of lease, and photos pursuant to valid warrant where these items were relevant to issue of occupancy of apartment and who possessed the marijuana seized pursuant to the warrant. Herrerra v. State (Tex. Cr.App.) 561 S.W.2d 175.

Parolee's Fourth Amendment right was not violated by parole officer's warrantless search of his apartment if latter's conduct is rationally related to the performance of his duties as parole officer, and search is reasonable. Fact that other officers joined parole officer in search did not invalidate search. People v. Huntley (N.J.) 371 N.E.2d 794.

SEARCH WARRANT

Where affiant negligently misrepresented that unnamed informant had previously provided him with information that had led to arrests and convictions, warrant was defective because such misrepresentation was a matter necessary to satisfy essential warrant requirement that magistrate make objective determination of credibility of informant and reliability of his information. U.S. v. Character (5th Cir.) 568 F.2d 442.

# THE IMPACT OF CRIME ON BUSINESS
# EVERYONE PAYS

BY

DR. WILLIAM F. BALLHAUS*

Since the industrialization of America, a few workers have viewed their employers as adversaries caring only about financial gain, lacking the human concerns shared by working people.

Some workers even tend to believe business only concerns itself with property crime having a dollar impact on business profit, such as arson, shoplifting, vandalism, extortion, fraud and the like.

These views are occasionally amplified by extremists, who engage in attacks on businesses, even kidnapping executives or their loved ones.

Just as I am sure the self-professed urban guerilla does not represent all working people, the unscrupulous executive "who would sell his or her mother for personal gain" does not represent all businesspeople. Experience has fortified my belief that criminals can be found in all levels of society. In any group of people, you can find some exceptionally good ones, some especially bad and most somewhere in between.

Without question, all crime impacts business. Property crimes, of course, can be translated into dollars. This year, for example, American business will lose well over $30 billion due to crime. These losses are reflected in the cost of doing business and the consumer always foots the bill, because when business costs go up the price of the product goes up. Bear in mind that business people and their families are also consumers.

We in business raise the price of goods and services to cover our crime related losses and our families and employees are shelling out extra money at

the checkstand along with everyone else. Crime also creates a domino effect in the marketplace. When business raises prices, it loses customers, resulting in production cuts, which result in employee layoffs, which increase unemployment and thereby raise taxes. The end result is always the same, everyone pays.

The "everyone pays" axiom is also true of violent crime. No one is untouched by the kind of violent criminal making today's headlines. Indeed, some violent criminals attack prominent figures in order to assure publicity. Others choose those easiest to prey upon--the poor, the elderly, our children.

In California, willful homicide has gone up 300 percent since 1963 while the population increased only 23.83 percent. Since 1967, forcible rape has doubled, aggravated assault is up 130 percent and robbery has nearly tripled. People are shot and killed on crowded streets by complete strangers.

Our schools, streets and bus stops are scenes for countless crimes against our children. The elderly feel barricaded in their homes and apartments. We are not even safe in our own beds. California cities, even small ones, have headline-making murderers, rapists and terrorists. We are all potential victims and the odds of remaining untouched by crime get worse every day.

And what about the victims themselves? Obviously, they weren't adequately protected before the crime occurred. What about victim's rights after the crime is committed? Let's assume that 32-year-old Gary Adkins had a right to live back in 1973 when he was brutally kicked and beaten and had his throat slit with a broken wine bottle in a Sacramento parking lot by a complete stranger. How does this balance with the fact that Stephen Babcock (who was caught later in a bar bragging about the murder) served exactly three years as a convicted murderer and is free today?

When a suspected killer is brought to trial it is not supposed to be a test

of only the defendant's right to freedom. If the defendant is guilty beyond a reasonable doubt, the courts must by weight of fairness and logic consider the victim's rights, and the public's right to protection. These rights are currently ignored.

The California Chamber of Commerce, believes business and people depend upon each other. The California Chamber's Anti-Crime Department was designed to assure that laws are made and enforced which will protect the public's right to live and work free from fear of criminal assault.

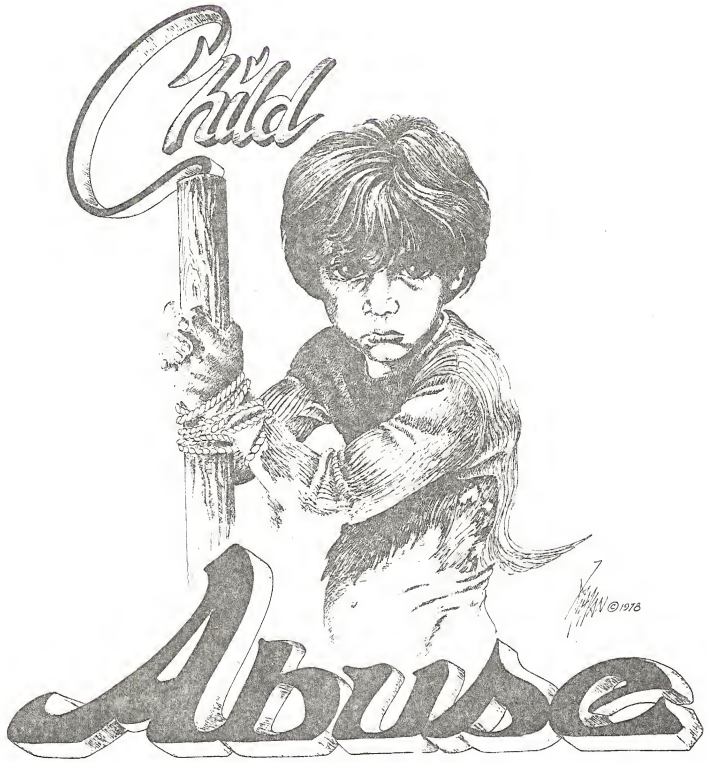
The Chamber's crime fighting effort is no flash-in-the-pan. Our Anti-Crime Committee is composed of some of California's most prestigious businessmen. These gentlemen created the Chamber's Anti-Crime Department and have managed its lobbying and public awareness effort for over two years.

We support "California's Forgotten Victims Week" because it brings the shameful failings of our criminal justice system before the people. This is critically important because in our country "of, by and for the people" everyone pays for failure and everyone must contribute to success.

I represent businesspeople who believe that a system geared to provide justice only for the criminal will always fail. A fight against crime is a fight for "equal justice", not just criminal justice. When the public and business unite to fight for equal justice, the freedom from fear we all desire will be attainable.

---

*Dr. William F. Ballhaus is president of Beckman Instruments Inc., located in Fullerton, California. Dr. Ballhaus, the 1978 president of the California Chamber of Commerce, speaks out as a businessman concerned with crime's impact on all segments of society.


Child
Abuse
©1976

# VICTIMS OF INNOCENCE: THE TRAGEDY OF CHILD ABUSE

By

ED MEESE *

For several years, public concern has been aroused by the plight of senior citizens who increasingly have become targets of violent attacks and other forms of criminality. More recently -- at the opposite end of the age spectrum -- a new and even more vulnerable class of victims has been found: children who are abused by the very people responsible for their care and protection.

The magnitude of child abuse in the United States has reached dangerous proportions. It is conservatively estimated that over one million cases of abused and neglected children occur nationally each year. Child abuse is a leading cause of infant mortality in this country and accounts for permanent injury to approximately 250,000 children per year.

Within California, approximately 60,000 cases of child abuse are reported annually, but the estimated number of additional, unreported cases is at least four times that great.

While these figures indicate a problem of great severity, and one which has been growing steadily during the last several years, the long-term portent of child abuse is even more ominous. The California Attorney General's Office, in a detailed study of the subject, concluded that "frequently abusing parents themselves experienced deficient childhoods. Consequently these parents use on their children the same destructive techniques their parents practiced on them. Without intervention, these patterns are transmitted for generations," perpetuating a recurring cycle of abusive behavior.

Child abuse is not limited to small children, but is increasingly found among

adolescent youth. The consequences of such mistreatment involves not only the immediate physical and emotional trauma to the victims, but also subsequent societal problems and delinquent behavior. A recent study of youths in a Colorado juvenile detention facility revealed that 84% of them had suffered mistreatment during childhood. A national analysis of youth-serving agencies indicates that as many as 50% of the young people requiring such services have been abused, and that sexual or physical mistreatment is a leading cause of teenagers running away from home.

Child abuse takes many forms. It may involve deliberate physical attacks, excessive physical punishment, emotional assault or deprivation, physical neglect, inadequate supervision or sexual exploitation. It is not limited by social, cultural or economic boundaries, but occurs in homes representing all ethnic, occupational, intellectual and financial groups. Its causes are numerous and complex and its manifestations involve a variety of legal, social and medical issues.

Many efforts have been made to combat the growing incidence of child mistreatment and neglect. California has a comprehensive body of laws prohibiting such crimes against children, requiring the reporting of incidents and providing for protective services. Many other states have enacted similar statutes. On the national level, the Child Abuse Prevention and Treatment Act became law in 1974, and a National Center on Child Abuse and Neglect has been established to provide leadership and research support.

Yet the problem continues and several major difficulties inhibit effective action in curbing these offenses.

First, recognition and reporting requires improvement. Often those who observe the symptoms of child abuse do not appreciate the seriousness of the problem or fail to report it to the proper authorities. There is sometimes a

reluctance on the part of neighbors, friends, teachers, physicians and social workers to become involved in a "family affair," because of concern about breaking up the household, causing loss of job or income, inflicting additional trauma on the child, or "bringing in the police." Professionals ignore their legal reporting requirements because of indifference, antagonism toward legal authorities, or the feeling that nothing positive will be done.

Second, even where the offense is reported, legal action against the abuser may be frustrated. The young victim, often the only witness, is usually confused and afraid, torn between love and fear of a parent, and uncertain of what is going on around him or her. Particularly in cases of emotional distress and sexual exploitation, the lack of witnesses, absence of tangible physical evidence, and inability or unwillingness of the victim to testify, makes successful prosecution extremely difficult.

Third, the victim often seems to be treated unfairly by the way that "the system" works. The abuser may be arrested, but is usually quickly released, either on his or her own recognizance or on bail, and is soon back in society. Meanwhile the child has been removed from home, friends and school and is placed in a juvenile facility or foster home, this displacement is combined with a series of interrogations by police, probation officer, medical practitioner and district attorney. Although these steps may be necessary to meet the requirement of the criminal process, it is understandable that the youthful victim soon feels that he or she is the one actually being punished and wonders if perhaps he or she is the one at fault.

Fourth, a further complication is the frequent conflict between law enforcement and social agencies in the handling of child abuse cases. Police officials complain of attempts to prevent their departments from investigating crimes against children and to have such matters handled by welfare, medical

and probation agencies exclusively. Where police investigation is initiated, they often receive less than full cooperation from professionals in those fields. Social agencies, on the other hand, argue that jail for the parents and a foster home for the child is not the answer, either, and contend that "family-oriented," rather than "punitive" solutions must be found.

Child abuse is a crime and law enforcement authorities have a responsibility for its investigation and for the protection of existing and potential victims. Likewise, prosecutors and judges have a duty to fulfill the requirements of the criminal law. However, the legal process need not be incompatible with family rehabilitation and treatment programs, provided that the physical and mental well-being of the child is not jeopardized. A variety of alternative dispositions, including both penalty and treatment modes, should be available to satisfy the legal, protective and rehabilitative aspects of each case. Cooperative efforts between law enforcement and social service agencies is necessary to select the most appropriate course of action to provide an effective solution and to prevent further victimization.

The problem of child abuse will not be quickly or easily solved. To even achieve substantial progress will require improved detection, diagnosis and reporting, as well as more extensive and effective facilities for prevention, investigation and treatment. A vital prerequisite is full and mutual cooperation among the several professions and various types of agencies involved in these efforts. Only then will we start to find answers to the difficulties described above.

If we are to merit recognition as a "civilized society" we cannot fail in our responsibility to provide for the protection of our youngest victims.

---

* Ed Meese is Director of the Center for Criminal Justice Policy and Management and Adjunct Professor of Law at the University of San Diego School of Law. A former deputy district attorney in Alameda County, he was Executive Assistant and Chief of Staff to the Governor of California during 1969-1974.

# NATIONAL COLLEGE OF DISTRICT ATTORNEYS

# MASTER CALENDAR OF PROGRAMS FOR PROSECUTORS

## MAY 1978

| | | |
|---|---|---|
| 4 - 5 | Utah Statewide Association of Prosecutors Semi-Annual Statewide Conference | Salt Lake City, Utah |
| 4 - 6 | Louisiana District Attorneys Association LDAA/LSA Conference | Toro Hills - Many, LA. |
| 5 | Kansas County & District Attorneys Association--Regional Training Seminar | Hutchinson, Kansas |
| 6 | Kansas County & District Attorneys Association--Regional Training Seminar | Garden City, Kansas |
| 10 - 11 | Michigan State Prosecutors Training Association--Administrative/Clerical Seminar | Higgins Lake, Michigan |
| 11 | Michigan Prosecuting Attorneys Association--Law of Evidence, Part II | Traverse City, Michigan |
| 14 - 17 | Kansas Bar Association Meeting | Colorado Springs, CO. |
| 18 | Michigan Prosecuting Attorneys Association--Regional Workshop | Alpena, Michigan |
| 24 - 26 | Michigan Prosecuting Attorneys Association--Prosecuting Drug Cases | Lansing, Michigan |
| May | California District Attorneys Association Sexual Assault/Child Abuse | Los Angeles, Calif. |
| May | California District Attorneys Association Sexual Assault/Child Abuse | Oakland, Calif. |

## JUNE 1978

| | | |
|---|---|---|
| 1 - 2 | Georgia Prosecuting Attorney's Council Seminar for the Prosecutor's Secretary | Macon, Georgia |
| 1 - 3 | Mississippi Prosecuting Attorneys Annual Business Meeting | Biloxi, Mississippi |
| 4 - 6 | California District Attorneys Association Basic Prosecutors Course, Part II | Pacific Grove, Calif. |
| 4 - 8 | Iowa County Attorneys Association & Prosecuting Attorneys Council Conference | Okoboji, Iowa |

| | | |
|---|---|---|
| 5 - 9 | Michigan State Prosecutors Training Association--Summer Intern Training | Lansing, Michigan |
| 7 - 9 | Texas District & County Attorneys Association-- | Corpus Christi, TX |
| 8 - 10 | Oklahoma District Attorneys Association & Training Coordinators Council--Annual Conference | Tulsa, Oklahoma |
| 9 - 10 | Kansas County & District Attorneys Association--KBA/KCDAA Criminal Law Seminar | Salina, Kansas |
| 11 - 17 | Executive Prosecutors Course (NCDA) | Houston, Texas |
| 14 - 17 | Colorado District Attorney's Council Criminal Law Update | Steamboat Springs, CO |
| 15 | Michigan Prosecuting Attorneys Association Regional Workshop | Marquette, Michigan |
| 16 - 17 | Arizona Prosecuting Attorneys Advisory Council--Homicide Seminar | Phoenix, Arizona |
| 23 | Michigan Prosecuting Attorneys Association Regional Workshop | Kalamazoo, Michigan |
| 26 - 28 | Washington Association of Prosecuting Attorneys--Summer Meeting | Lake Chelan, WA |
| 27 - 30 | California District Attorneys Association Summer Conference | Monterey, Calif. |
| 30 | Michigan Prosecuting Attorneys Association Law of Evidence, Part II | Big Rapids, Michigan |

JULY 1978

| | | |
|---|---|---|
| 5 - 8 | Georgia Prosecuting Attorneys Council 1978 Nuts & Bolts Seminar | Jekyll Island, Georgia |
| 9 - 13 | Pennsylvania District Attorneys Association 1978 Annual Meeting | Hershey, Pennsylvania |
| 9 - 14 | NDAA Annual Meeting | Hershey, Pennsylvania |
| 13 - 14 | Indiana Prosecuting Attorneys Council Attorney General's Summer Conference for Prosecutors | Clarksville, Indiana |
| Mid-July | Idaho Prosecutors Association Summer Training Seminar | McCall, Idaho |
| 16 - Aug 4 | Career Prosecutor Course (NCDA) | Houston, Texas |
| 26 - 29 | Louisiana District Attorneys Association--Third Annual SE Regional Homicide Seminar | New Orleans, LA |
| 26 - 29 | Michigan Prosecuting Attorneys Association--51st Annual Conference | Mackinac Island, MI |
| 27 - 29 | Arkansas Prosecutor Coordinator--Search and Seizure Seminar | Little Rock, Arkansas |

| | | |
|---|---|---|
| July | California District Attorneys Association<br>Paper Crimes/Abatement | Oakland, Calif. |
| | AUGUST 1978 | |
| 3 - 9 | American Bar Association's Annual Meeting | New York, New York |
| 11 - 12 | Nebraska County Attorneys Association--<br>Training Seminar | Ogallala, Nebraska |
| 17 - 20 | Kansas County & District Attorneys Association<br>Kansas, Oklahoma, & Arkansas Training Institute<br>(NCDA - Workshops) | Grand Lake, Oklahoma |
| 30 - Sep 1 | Georgia Prosecuting Attorneys Council Basic<br>Prosecutor's Course | Decatur, Georgia |
| August | California District Attorneys Association<br>Advanced Prosecutors Course | Pacific Grove, Calif. |
| Aug or Sept | Arizona Prosecuting Attorneys Advisory Council<br>New Criminal Code Seminar | Phoenix, Arizona |
| | SEPTEMBER 1978 | |
| 8 | Kansas County & District Attorneys Association<br>Regional Training Seminar | Hoxie, Kansas |
| 15 | Kansas County & District Attorneys Association<br>Regional Training Seminar | Iola, Kansas |
| 17 - 21 | Organized Crime I (NCDA) | Pittsburgh, Pennsylva |
| 22 | Kansas County & District Attorneys Association<br>Regional Training Seminar | Topeka, Kansas |
| 24 - 26 | Colorado District Attorneys Council Fall Conference | Denver, Colorado |
| 24 - 29 | Prosecutors Investigators School (NCDA) | Quantico, Virginia |
| 28 - 30 | Georgia Prosecuting Attorneys Council--3rd Annual<br>SE Regional Prosecutor's Institute | Atlanta, Georgia |
| 29 | Kansas County & District Attorneys Association<br>Regional Training Seminar | Hutchinson, Kansas |
| | OCTOBER 1978 | |
| 4 - 6 | Washington Association of County Officials Fall<br>Meeting | Yakima, Washington |

| | | |
|---|---|---|
| - 7 | Trial Techniques for Prosecutors (NCDA) | Denver, Colorado |
| 6 | Kansas County & District Attorneys Association Regional Training Seminar | Salina, Kansas |
| 3 | Kansas County & District Attorneys Association Regional Training Seminar | Garden City, Kansas |
| 23 - 27 | California District Attorneys Association Third Annual National Homicide Symposium | Los Angeles, Calif. |
| 9 - Nov 1 | Law & Evidence for the Prosecution Advocate (NCDA) | San Francisco, Calif. |
| ct. | Idaho Prosecutors Association--Fall Training Seminar | Site to be selected |

NOVEMBER 1978

| | | |
|---|---|---|
| - 3 | Georgia Prosecuting Attorneys Council--18th Annual District Attorneys Seminar | Athens, Georgia |
| | Nebraska County Attorneys Association--Annual Meeting | Omaha, Nebraska |
| - 11 | Florida Prosecuting Attorneys Association Fall Conference | Daytona Beach, Florida |
| 2 - 14 | Kansas County & District Attorneys Association State-wide Training Institute--KOC | Wichita, Kansas |
| 2 - 15 | Management in the Prosecutors Office (NCDA) | Atlanta, Georgia |

DECEMBER 1978

| | | |
|---|---|---|
| - 6 | NDAA Board Meeting | Colorado Springs, CO |
| - 3 | Washington Association of Prosecuting Attorneys Winter Meeting | Seattle, Washington |
| - 6 | Prosecuting Crimes Against Persons (NCDA) | San Diego, Calif. |
| - 8 | Indiana Prosecuting Attorneys Council Newly Elected Prosecutors School | Indianapolis, Indiana |

JANUARY 1979

| | | |
|---|---|---|
| - 12 | Prosecutors Office Administrators Course, Part II (NCDA) | Houston, Texas |
| - 20 | Nebraska County Attorneys Association--Training Seminar | Kearney, Nebraska |

| | | |
|---|---|---|
| | **FEBRUARY 1979** | |
| 4 - 8 | NDAA Juvenile Justice Conference | San Diego, Calif. |
| 4 - 9 | Organized Crime I (NCDA) | Los Angeles, Calif. |
| 25 - Mar 2 | NDAA Midwinter Meeting | Biloxi, Mississippi |
| | **MARCH 1979** | |
| 4 - 7 | Prosecuting Drug Cases (NCDA) | Tampa, Florida |
| 18 - 20 | Prosecuting Crimes Against Property (NCDA) | New Orleans, Louisiana |
| 25 - 29 | NDAA Juvenile Justice Conference | Miami, Florida |
| 29 - 31 | Nebraska County Attorneys Association--Annual Meeting | Omaha, Nebraska |
| | **APRIL 1979** | |
| 1 - 5 | Organized Crime II (NCDA) | Houston, Texas |
| 22 - 26 | National Association of County Officials | Chicago, Illinois |
| 22 - 26 | Trial Techniques for Prosecutors (NCDA) | Boston, Massachusetts |
| 29 - May 4 | Prosecutor's Office Administrator Course Part III (NCDA) | Houston, Texas |
| | **MAY 1979** | |
| 20 - 24 | NDAA Spring Board Meeting | Hilton Head, SC |
| | **JUNE 1979** | |
| 2 - 9 | Executive Prosecutor Course (NCDA) | Houston, Texas |
| | **JULY 1979** | |
| 8 - 28 | Career Prosecutor Course | Houston, Texas |
| 29 - Aug 3 | NDAA Summer Meeting | Mackinac Island, MI |
| | **OCTOBER 1979** | |
| 8 - 9 | Nebraska County Attorneys Association Annual Meeting | Omaha, Nebraska |